

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION SIX**

THERMAL TRANSFER CORPORATION

Employer

and

UNITED STEELWORKERS OF  
AMERICA, AFL-CIO, CLC

**Case** 6-RC-12157

Petitioner

**REGIONAL DIRECTOR'S DECISION AND  
DIRECTION OF ELECTION**

The Employer, Thermal Transfer Corporation, is engaged in the design and manufacture of heat exchange and environmental equipment at its facilities in Monroeville and Duquesne, Pennsylvania. The Petitioner, United Steelworkers of America, AFL-CIO, CLC, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and regular part-time production and maintenance employees employed by the Employer at its Duquesne and Monroeville, Pennsylvania, facilities; excluding all office clerical employees<sup>1</sup> and guards, professional employees and supervisors as defined in the Act.

At the hearing and in their briefs,<sup>2</sup> the parties disagree on unit placement and/or the supervisory status of certain individuals. The parties differ as to supervisory status of Edward Duran, Patrick Kundla, Richard Atkins and Lee Solada. The Petitioner, contrary to the Employer, contends that these individuals must be excluded from any unit because they are statutory supervisors. The

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<sup>1</sup> During the hearing, the parties stipulated that Andrea Punturi is excluded from the unit herein found appropriate on the basis that she is an office clerical employee.

<sup>2</sup> The Employer filed a timely brief and the Petitioner filed a letter in lieu of brief in this matter, which have been duly considered by the undersigned.

Petitioner, contrary to the Employer, would also exclude three purchasing agents (James Baker, Rachel Baxter and Mark Roney), three designers (James Full, Ray Lucas and Tom Antal),<sup>3</sup> sales employee Timothy Wurzer,<sup>4</sup> program operator Robert Pelzer and safety coordinator Mark Katis on the basis that these employees do not share a community of interest with the production and maintenance employees and/or that they are supervisory employees.<sup>5</sup> The Petitioner seeks to represent approximately 69 production and maintenance employees working at the two facilities. The Employer's proposed unit would consist of approximately 82 employees. There is no history of collective bargaining in the petitioned-for unit. The Petitioner has indicated that it is willing to proceed to an election in any unit found appropriate herein.

I have considered the evidence and arguments presented by the parties as to the unit placement and supervisory issues. I have concluded, as discussed below, that the Petitioner has not met its burden of establishing that the disputed crew leaders and Edward Duran are statutory supervisors and therefore they must be included in the unit. I have also concluded that the three designers, as well as purchasing agents James Baker and Rachael Baxter, program operator Robert Pelzer and sales employee Timothy Wurzer do not share a community of interest with the petitioned-for employees which is sufficient to require their inclusion in the unit. With respect to purchasing/logistics agent Mark Roney and Safety Coordinator Mark Katis, I have concluded that these

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<sup>3</sup> The Petitioner also contends that the designers are technical employees.

<sup>4</sup> During the hearing, the parties stipulated that sales employees are excluded from the unit herein found appropriate. With respect to Wurzer, the Employer contends that he performs duties related to production in addition to performing sales duties.

<sup>5</sup> At the hearing, the Employer sought to exclude two quality control employees (Ronald Maksim and Carol Sarabica) on the basis that they do not share a community of interest with the petitioned-for employees. However, in its brief the Employer concedes, and I find, that the record does not support this contention. Accordingly, quality control employees Maksim and Sarabica shall be included in the unit found appropriate herein.

In addition, the record establishes that the Employer utilizes temporary workers that it obtains from Nesco, a temporary agency. Currently, the Employer has five temporary employees: Robert Garon, Doug Hensley, Robert Laero, Mark Trautman, and Lewis Edwards. The parties stipulated that temporary employees should be excluded from the unit found appropriate herein because they have no expectancy of continued employment. I so find.

employees must be included in the unit as they regularly perform production duties. Accordingly, I have directed an election in a unit of approximately 75 employees, including the disputed crew leaders, included Edward Duran, the safety coordinator and the purchasing/logistics agent. To provide a context for my discussion of the issues, I will first provide an overview of the Employer's operations. I will then present, in detail, the facts and reasoning that support my conclusions on the issues.

## **I. Overview of Operations**

The Employer, a subsidiary of Hamon Corporation, U.S., is engaged in the design and manufacture of custom fabricated high temperature heat recovery equipment and environmental equipment. The Employer operates four divisions, one of which is located at the Monroeville facility and three of which are located at the Duquesne facility.

The Employer's Monroeville facility houses its heat recovery division. The work at this facility involves the designing and building of custom fabricated high temperature heat recovery equipment, including equipment fabricated from stainless steel. The manufacture of this equipment is performed in segments or stages. The Monroeville facility consists of a 36,000 square-foot structure that holds a 34,000 square-foot production shop and 2,000 square feet of office space. The record indicates that the Monroeville facility was the Employer's original facility at which all management officials were located. Since the building and renovation of the new facility in Duquesne, Pennsylvania, most of the Employer's management officials have been relocated there.

The Employer's Duquesne facility is a one-story building which has a distinct front office section, production floor, and two large production bays. Unlike the operation at the Monroeville facility, the Duquesne operation is described in the record as an assembly or production line operation. Each production line is administratively designated as a separate division of the company. The electrostatic precipitation ("ESP") Division <sup>6</sup> and the Hamon Biraghi ("HBD") Division <sup>7</sup> are housed in a

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<sup>6</sup> Precipitating plates and discharge electrodes are manufactured for Hamon Corporation, U.S. in the ESP Division.

68,000 square foot bay. The single-row condenser ("SRC") Division is located in a second bay, which covers 41,000 square feet.<sup>8</sup> The production area of the Duquesne facility also has shop offices for foremen, locker rooms, logistics offices and a shop lunch room. There is also a lunch room in the main office for use of administrative and management personnel.<sup>9</sup>

President Timothy Ottie is responsible for the overall operations of the Employer. The Employer's management staff includes Vice President of Manufacturing Armand Vanek, Engineering Manager John Kustra, Human Resources Coordinator Donna Trbovich, Quality Control Manager Nick Test, the Controller, the Business Development Manager, Supervisors Mike Smitley and Steve Barainyak, and Foremen Dan Miller, Bob Kuhns, and Darrell Swick.<sup>10</sup>

Employees working on the production floor include laborers, assemblers, logistics, operators, maintenance technicians, welders, a janitor and the crew leaders.<sup>11</sup> All wear steel-toed safety shoes and safety glasses. All employees have the option of wearing company uniforms.<sup>12</sup> The record indicates that many production and maintenance employees choose to avail themselves of this

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<sup>7</sup> The HBD Division produces high-frequency welding fin tubes. The record indicates that this division is presently shut down due to a lack of work, and the Employer plans to relocate the HBD operation to Monroeville.

<sup>8</sup> In the SRC Division, air cooled steam condensers for the power industry are manufactured. Like the product of the ESP Division, these condensers of the SRC Division are manufactured solely for the parent company.

<sup>9</sup> The record establishes that in the office area there are enclosed offices and cubicles. The enclosed offices are used by the President, Vice President of Manufacturing, Controller, Human Resources Coordinator, Production Supervisors, Business Development Manager, Engineering Manager, and the Quality Control Manager. Also working in the main office area in cubicles are the sales and estimating employees, engineering department employees, payroll, project management, designers, purchasing agents, and the office clerical employee.

<sup>10</sup> During the hearing, the parties stipulated, and I find, that the following individuals are supervisors within the meaning of the Act based on their authority to hire, fire and discipline or to effectively recommend such actions: Barainyak, Smitley, Test, Swick, Kuhns and Miller. The parties further stipulated, and I find, that Production Manager Steve Gingery, who works out of the Monroeville facility, is also a supervisor within the meaning of the Act based on his possession of the same authorities.

<sup>11</sup> Other than the specific crew leaders at issue herein, the parties agree that these job classifications are encompassed in the general designation of production and maintenance employees.

<sup>12</sup> The Employer has a contract with a uniform service.

benefit. Other production and maintenance employees wear worn blue jeans and old clothing to work.<sup>13</sup> Employees who primarily work in the office area wear casual street clothing and casual shoes to work.

It appears that all employees enjoy corporate-wide benefits, which include family health insurance coverage, 13 paid holidays, 15 paid time off (PTO) days, and short and long-term disability insurance. Hourly paid production and maintenance employees, including crew leaders, punch a time clock. Although hourly paid, other employees, who work in non-production type positions, do not punch a time clock. Rather, these employees complete time sheets. The employees work an eight-hour shift. The record indicates that production employees have staggered start times such that half of the shift starts working two hours earlier than the other half.

As noted, the Duquesne facility has a locker room and two lunch rooms.<sup>14</sup> One of the lunch rooms is located in the main office area and the other is in the production area. A sign posted at the Duquesne facility advises that production employees are not permitted in the office area without authorization or unless accompanied by a supervisor. At the Duquesne facility there is an upper and lower parking lot. The lower lot is designated for use by office, administrative, and supervisory personnel. The upper lot is designated for use by production and maintenance employees.

## **II. Supervisory Issues**

The Union, contrary to the Petitioner, asserts that three of the seven crew leaders and Ed Duran should be excluded from the unit found appropriate herein because they are supervisors within the meaning of the Act.<sup>15</sup>

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<sup>13</sup> The record establishes that the production and maintenance work performed on the production floor causes employees' clothing to become quite soiled by the end of each day.

<sup>14</sup> The Monroeville facility has a locker room and a lunch area.

<sup>15</sup> Contrary to the position taken at the hearing, in its post-hearing submission, the Union identifies Ed Duran, Patrick Kundla and Lee Solada as the crew leaders in question. At the hearing, the Union's stated

**a. Ed Duran**

Ed Duran became employed by the Employer in January 2000. The record establishes that from January 2001 to January 2002, Duran was a supervisor in the HBD Division.<sup>16</sup> The record contains evidence that during that time period, in August 2001, a production employee, Michael Dow, was interviewed and hired by Duran. During the course of the interview, Duran agreed that employee Michael Dow could provide his prior employer with a two-week notice and Duran offered Dow a starting wage rate of \$9 per hour. Upon beginning his employment, Dow was assigned to the fin department of the HBD Division and was supervised by Duran. When the fin department of the HBD shut down in January 2002, Dow was assigned to the SRC Division. At that time, Duran told Dow that Duran was going to be a night foreman in the SRC Division.

Since January 2, 2002, Duran has held the position of crew leader in the skid division.<sup>17</sup> His primary function in this position has been building and fitting pipe,<sup>18</sup> and 95 percent of his time is spent working with his hands in the production process. Since January 2002, Duran has had no involvement in hiring, transferring, suspending, laying off, recalling, promoting, discharging, rewarding, disciplining, adjusting grievances, granting time off to employees. As to assignment of employees or responsibly directing them, the record reveals that in the position of crew leader, Duran only relays directions from Supervisor Mike Smitley to the crew. As a crew leader, Duran is also responsible for setting up the machinery to make sure it runs correctly.<sup>19</sup>

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position was that Duran should be excluded as a foreman, and that Kundla, Solada and Rich Atkins should be excluded as "supervisory-type" crew leaders. The status of all four individuals will be discussed and determined herein.

<sup>16</sup> The HBD Division shut down in January 2002.

<sup>17</sup> It appears from the record that this area is part of the SRC Division.

<sup>18</sup> Fitting involves connecting product and tack welding it to secure the connection until a welder can complete the process.

<sup>19</sup> The record indicates that before being supervised by Mike Smitley, Ed Duran reported directly to then-Supervisor Vince Smodik, who, at the time of the hearing, was no longer employed by the company.

The record also establishes that Duran attends employee meetings with the production employees, is subject to the same plant rules and enjoys no additional benefits other than those enjoyed by all production and maintenance employees. Duran is hourly paid,<sup>20</sup> punches a time clock, wears steel-toed boots and safety glasses. Duran wears the uniform offered to employees by the Employer.<sup>21</sup> Duran parks his car in the lower parking lot, where administrative and management employees park.

**b. Solada, Kundla and Atkins**

Solada, Kundla and Atkins also hold the position of crew leader. Solada, a ten year employee, has held the crew leader position for approximately one year. The record indicates that his duties include working with a production crew at either facility, coordinating the work and ensuring that production keeps moving. Solada, Kundla and Atkins wear steel-toed boots, as is required for those working on the production floor, punch a time clock and are hourly paid.<sup>22</sup> The record indicates that Solada receives an evaluation approximately once per year from Production Manager Mike Smitley. Solada has never been involved in hiring, transferring, suspending, disciplining, adjusting grievances of employees, granting time off, scheduling or evaluating employees.<sup>23</sup> Solada's assignment of employees involves receiving directives from higher management as to what jobs are to be performed and then directing the crew as to their functions.

With respect to Kundla and Atkins, the record reveals that both are welders/fitters as well as crew leaders. There is no evidence in the record that either Kundla or Atkins have ever been involved

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<sup>20</sup> Duran's wage rate is \$17.50 per hour.

<sup>21</sup> Although the Employer offers and pays for uniforms for its employees, employees are not required to wear a uniform. It appears from the record that at one time, the uniform offered to hourly employees differed from that worn by supervisory employees. The uniform for production employees consisted of a solid colored shirt and pants, whereas supervisory employees wore solid colored pants and a striped shirt. The practice of differentiating uniforms gradually changed. Currently, both rank and file employees and supervisory employees wear both versions of the uniform.

<sup>22</sup> Solada's wage rate is \$18.50 per hour.

<sup>23</sup> Likewise, there is no evidence in the record that he rewards, promotes, lays off or recalls employees.

in hiring, transferring, suspending, laying off, recalling, promoting, disciplining or adjusting the grievances of employees.<sup>24</sup> Moreover, there is no evidence that they have granted time off or established work schedules or rewarded employees. Any overtime worked by the crew is approved by the shift supervisor. If overtime is necessary and has been approved, the crew leaders will advise the crew and solicit volunteers.

The Union asserts that crew leaders are given work orders from higher-level supervision and that they choose which employees will carry out the work to be done. The Union further asserts that Kundla and Solada terminated employee Carl Stanko, albeit from instructions from higher authority.

In this regard, the record reflects that Carl Stanko, a production employee, worked at the Monroeville facility from about September 2001, to October 2002. The record establishes that Stanko reported to Supervisor Steve Barainyak. Barainyak gave Stanko his annual review prior to October 2002.<sup>25</sup>

On October 4, 2002, crew leaders Solada and Kundla met with Stanko privately in Barainyak's office to inform Stanko that, because the division in which he worked was shutting down, he and ten other employees were being dismissed at the end of the shift. According to Stanko, the crew leaders told him that he had a very low score on the "evaluation test."

Crew leader Solada testified regarding the day that he and Kundla informed Stanko of his termination. Solada was directed by Smitley to meet with Stanko in the presence of another crew leader to inform him that he was being terminated. According to Solada, he had no role in deciding that Stanko would be terminated and was asked by Smitley to simply communicate this information because Smitley was unable to make it to the Monroeville facility that day.<sup>26</sup> Solada said that the

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<sup>24</sup> There is no contention that Atkins has ever discharged an employee.

<sup>25</sup> Only Barainyak signed Stanko's evaluation on behalf of the Employer.

<sup>26</sup> Smitley has an office at the Monroeville facility.



reason communicated to Stanko for his selection was that Stanko fell within the limits on the performance evaluation.<sup>27</sup> Solada testified that he had never seen Stanko's evaluation.<sup>28</sup>

Before examining the specific duties and authorities of the crew leaders and Ed Duran, I will review the requirements for establishing supervisory status. Section 2(11) of the Act defines the term supervisor as:

[A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

To meet the definition of supervisor in Section 2(11) of the Act, a person needs to possess only one of the 12 specific criteria listed, or the authority to effectively recommend such action. Ohio Power Co. v. NLRB, 176 F.2d 385 (6<sup>th</sup> Cir. 1949), cert. denied 338 U.S. 899 (1949). The exercise of that authority, however, must involve the use of independent judgment. Harborside Healthcare, Inc., 330 NLRB 1334 (2000).

The burden of proving supervisory status lies with the party asserting that such status exists. NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 711-712 (2001); Michigan Masonic Home, 332 NLRB No. 150, slip op. at 1 (2000). The Board has frequently warned against construing supervisory status too broadly because an employee deemed to be a supervisor loses the protection of the Act. See, e.g., Vencor Hospital – Los Angeles, 328 NLRB 1136, 1138 (1999); Bozeman Deaconess Hospital, 322 NLRB 1107, 1114 (1997). Lack of evidence is construed against the party asserting supervisory status. Michigan Masonic Home, supra, slip op. at 1. Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory authority. Sears, Roebuck & Co., 304 NLRB 193 (1991).

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<sup>27</sup> Solada was directed by Smitley to provide this information.

<sup>28</sup> Like other production and maintenance employees, Solada receives overtime pay when he works more than 40 hours in a week.

Possession of authority consistent with any of the indicia of Section 2(11) is sufficient to establish supervisory status, even if this authority has not yet been exercised. See, e.g., Fred Meyer Alaska, 334 NLRB No. 94, slip op. at 4 n. 8 (2001); Pepsi-Cola Co., 327 NLRB 1062, 1064 (1999). The absence of evidence that such authority has been exercised may, however, be probative of whether such authority exists. See Michigan Masonic Home, supra, slip op. at 3; Chevron U.S.A., 309 NLRB 59, 61 (1992). The Board and the Courts have recognized that an employee does not become a supervisor merely because he has greater skills and job responsibilities than fellow employees or because he gives some instructions or minor orders. Byers Engineering Corp., 324 NLRB 740 (1997); Chicago Metallic Corp., 273 NLRB 1677 (1985).

The record herein establishes only that Duran, Solada, Kundla and Atkins provide routine direction to employees in the completion of jobs while engaging in their primary work of production. With respect to assigning employees and responsibly directing them, the record reveals that Duran and the other crew leaders are directed by higher management before advising crew members of the jobs to be performed. If overtime is needed on a particular job, foremen or the production manager authorize the crew leader to solicit employees to work overtime.

The assignment of work pursuant to plans and schedules developed by higher management does not establish supervisory status. Arlington Electric, Inc., 332 NLRB No. 74 (2000). In this case, the burden of proving that supervisory status, which rests with the Petitioner, has not been met.

Based on the above and the record as a whole, I find that Edward Duran, Lee Solada, Patrick Kundla and Richard Atkins are not supervisors within the meaning of the Act, and, accordingly, I shall include them in the unit found appropriate herein.

### **III. Purchasing Employees**

The Employer contends, contrary to the Petitioner, that three purchasing agents (Mark Roney, James Baker and Rachael Baxter) should be included in the unit inasmuch as they share a community of interest with the petitioned-for employees. The Union contends that all three are

administrative or management employees who lack a community of interest with the petitioned-for employees. In addition, the Union contends that Roney and Baxter are supervisory employees.

The Employer employs three purchasing agents who are responsible for purchasing all consumable products.<sup>29</sup> They are also responsible for ensuring that the paperwork involving receipt of such products is correct, monitoring inventory, and preparing paperwork for logistics on outbound products. With respect to the custom-made products, the purchasing agents make sure that products which are ordered arrive in a timely manner.

The purchasing agents are not required to possess a degree or education beyond a high school education. These employees receive the same benefit package as production and maintenance employees and are hourly paid. Their wage rate range is between \$13 to \$22 per hour.

**a. James Baker**

James Baker performs purchasing functions at the Duquesne facility. Baker has an enclosed office at that facility. The record indicates that Baker performs no work on the production floor. Baker wears business casual clothes to work and does not wear steel-toed shoes or safety glasses. Baker parks in the lower parking lot. As to Baker's specific duties, the record contains evidence regarding one production worker's past dealings with Baker when the production worker previously occupied the position of logistics manager. In this regard, the record reflects that from February 2000 to February 2001, the then-logistics manager submitted a requisition form for all necessary material to Baker. Baker then contacted a supplier, ordered the requested material and assigned it a purchase order number.<sup>30</sup>

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<sup>29</sup> The Employer refers to consumable products as those products which are used repeatedly in the production line operations, as opposed to custom-made products which are utilized in the Employer's batch operations. It appears that "batch operations" refers to the staged work involved in the manufacture of custom fabricated heat recovery equipment at the Monroeville facility.

<sup>30</sup> The record indicates that purchasing agents rarely leave the facility to order products. Rather, they conduct most of their business by telephone.

**b. Mark Roney**

Roney's title is purchasing agent, but his duties include both purchasing and logistical functions. With respect to purchasing, Roney handles the purchasing and receiving of raw materials for the production shop at the Duquesne facility.<sup>31</sup> Roney also checks paperwork for accuracy and generates bills of lading for shipments from the plant. Roney's duties with respect to logistics include coordinating and scheduling trucks to ship products based on the due date for the receipt of material. Two employees work with Roney in logistics.<sup>32</sup>

Roney's desk and computer are located in the logistics office, which is next to the production shop. Roney's work involves both the finished product of the Employer and the raw materials used in the production process. Rooney estimated that his duties require him to be on the shop floor approximately 75 percent of the time. Roney regularly has lunch and takes break with production employees. He also attends safety meetings and other meetings with production employees, including the two employees with whom he directly works. Roney reports to Production Manager Gingery, as do Ivaska and Acie.

Logistics employees Ivaska and Acie operate the crane and forklift in performing their duties of loading and unloading the trucks which have been ordered and scheduled by Roney. Roney does not operate the crane or the forklift. Roney's duties with respect to actual loading and unloading of trucks appear to be limited to photographing damaged goods from suppliers and, with respect to outbound shipments, checking that the Employer's product is securely loaded. Roney also photographs the finished product which is loaded for shipment. Roney is responsible, however, for loading and unloading deliveries by hand from UPS trucks.<sup>33</sup> It appears from the record that UPS delivers shipments to the facility on a regular basis.

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<sup>31</sup> The record indicates that Roney has, on occasion, taken inventory at the Monroeville facility.

<sup>32</sup> The two employees, who are included in the petitioned-for unit, are: Peter Ivaska and Paul Acie.

<sup>33</sup> The loading and unloading of UPS shipments does not involve work with a crane or a forklift.

Inasmuch as Roney has little direct contact with the materials on the production floor, Roney wears street clothes to work. Roney is hourly paid,<sup>34</sup> but does not punch a time clock. Any overtime Roney works must be approved by Production Manager Gingery or by Vice President of Manufacturing Vanek. Prior to becoming a purchasing agent, Roney was an inventory specialist.<sup>35</sup> Roney's business card lists "purchasing and logistics" under his name.<sup>36</sup>

Roney does not schedule the work hours of Ivaska or Acie. Roney's, Ivaska's and Acie's scheduled work hours are the same and do not vary from week to week. Roney does schedule Ivaska's and Acie's workload by scheduling trucks and the flow of material. At times, Roney will direct these two employees to stop what they are doing to perform the work of unloading an incoming truck. The record indicates that loading and unloading trucks is a fixed priority, and that Roney simply tells Ivaska and Acie when trucks arrive at the facility. Ivaska, Acie and Roney then perform their functions with respect to the loading and unloading of products.

The record establishes that Roney has no authority to hire, transfer, suspend, lay off, recall, promote, discharge, discipline or adjust grievances of employees.<sup>37</sup> With respect to any assignment of work to, or responsible direction of, Ivaska and Acie, the record indicates that Roney's role in these areas is limited to advising them by walkie-talkie or by conversation on the floor that a truck has arrived. At this point, Acie and Ivaska will stop what they are doing and unload the truck utilizing the forklift or the crane. The record indicates that Gingery informs these employees of their workload each day, but Roney advises them during the course of the day if changes have occurred based on the arrival or departure of a truck.

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<sup>34</sup> Roney's wage rate is approximately \$13 per hour.

<sup>35</sup> Roney did not receive a raise with this change in title. The record indicates that no one has filled Roney's former position and Roney continues to perform the duties of the inventory specialist.

<sup>36</sup> The Employer supplies Roney's business cards.

<sup>37</sup> Likewise, there is no evidence that Roney has the authority to reward employees.

As stated, Roney checks each incoming and outgoing load for damages. If any are found, he is responsible for photographing and documenting such damages. It appears from the record that Roney's coworkers view him as their crew leader.

The record contains one example of Roney allowing Acie to leave work early. In that case, Acie's father had been taken to the emergency room of a hospital. Roney told Acie that he could leave, but immediately reported this to Gingery, who approved the action. The record also indicates that employees advise Roney of the dates on which they wish to utilize paid time off. Roney, in turn, advises Gingery of the scheduled work load, and Gingery determines whether to approve the request for time off.

The record also indicates that Roney attended one employee review meeting several months before the hearing in this matter when Supervisor Gingery conducted the performance evaluation of Acie. During the meeting, Roney offered a favorable opinion regarding Acie's performance. As of the time of the hearing, Roney was unaware whether Acie had received any promotion or other favorable action as a result of his input.

**c. Rachael Baxter**

Rachael Baxter,<sup>38</sup> spends a portion of each day performing purchasing functions. As of the time of the hearing, Baxter had only "recently" become employed by the Employer, having been a temporary employee since approximately November 2001. The record indicates that since May 2002, Baxter has worked primarily at the Monroeville facility. Baxter estimated that she spends approximately 30 to 60 percent of her time on the production floor. According to Baxter, two other

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<sup>38</sup> The record contains a business card which lists the title of Baxter "assistant production manager." The record establishes that Baxter has never held this position or been given this title by the Employer. Because Baxter deals with vendors, the Employer authorized her to order business cards, and Baxter took it upon herself to describe her duties with the title appearing on the card. When the cards arrived, Production Manager Mike Smitley advised her not to distribute them. The record indicates that Baxter also has the title of controller operator.

employees at the Monroeville facility also have the title of controller/operator; they are Bob Pelzer and Mike Maystrovich.<sup>39</sup>

Vendors meet with Baxter when they visit the facility.<sup>40</sup> If Baxter determines that a certain product is needed and the price is acceptable, she calls the office to have a tax identification form and a credit application form prepared and to have an account set up. Baxter deals with two of the office employees in such instances. Baxter then places the purchase order. Baxter is aware of which supplies are needed because SRC Production Manager Smitley inventories the supplies. Smitley then informs Baxter of the inventory results. Smitley signs off on every purchase order before it is placed. When the order is received, Baxter reviews the packing slip to ensure the correct items have been delivered.

When she is not on the production floor, Baxter works with her computer in her office at the Monroeville facility.<sup>41</sup> Baxter is responsible for checking employee time cards and reporting the results to the main office. This information is utilized for payroll purposes.<sup>42</sup> Baxter also utilizes employee timecards and timesheets to update the production schedule. At times, Baxter is called upon by higher management to report on the status of a job. Baxter will check the schedule and report on the projected completion date and shipping date. There is no evidence in the record establishing that Baxter performs any work directly related to the production process.

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<sup>39</sup> The unit placement of Pelzer is discussed herein. It appears from the record that Maystrovich's duties are limited to operating the burn table.

<sup>40</sup> Baxter testified that she deals with vendors who sell pipe supplies, fittings, safety supplies and industrial supplies, such as grinding wheels. Baxter also testified that she spends one to two hours per day performing the purchasing functions.

<sup>41</sup> She also has a cubicle at the Duquesne facility, but has not used it since she became primarily assigned to the Monroeville office.

<sup>42</sup> If Baxter discovers that one of the production employees has failed to punch in or out, she will advise the employee. The employee will then manually record his or her starting or ending time. In addition to the timecards, employees are also required to complete timesheets, which are referred to in the record as "green sheets." The payroll is prepared utilizing green sheets. The record establishes that all green sheets are signed by a supervisor, presumably Smitley, before they are submitted to payroll.

The record contains one instance in which Baxter directed a production employee to stop what he was doing to “sand welds down” for her. The production employee did so inasmuch as Baxter had previously informed him that she was the assistant production manager. The record reveals that no one from management ever made such a comment to this, or any other production employee. The production employee also testified that after he had been working at the Monroeville facility for a period of approximately two weeks, Baxter informed him that he was to report to the SRC Division at the Duquesne facility the following day. There is no evidence in the record that Baxter made the determination to reassign the employee to the Duquesne facility.

The record establishes that Baxter wears street clothes (slacks and a blouse) to work and often wears tennis shoes.

In determining whether an employee should be considered an office clerical employee or a plant clerical, it must be determined whether the employee’s functions are closely associated with the production process. T. E. Hamilton, A Sole Proprietor d/b/a Hamilton Halter Co., 270 NLRB 331 (1984). As the Board pointed out in T. E. Hamilton, the line between plant clerical and office clerical is not always easily distinguishable. In this regard, the Board has long held that the distinction between office and plant clericals is rooted in community of interest concepts. Mitchellace, Inc., 314 NLRB 536 (1994). In determining whether an employee is a plant or office clerical, the Board has additionally considered the location where the individual performs his or her work and the amount of time the employee spends performing other duties. In Container Research Corp., 188 NLRB 586, 587 (1971), the Board determined the status of several clerical positions. Material planners who scheduled production and usage of materials were found to be plant clerical positions because the position required contact with the production and maintenance employees and the material planners received comparable salaries and fringe benefits and were subject to the same supervisors. Likewise, the expeditors and production control coordinators at issue, who spent “95 percent” and “virtually all” of their time on the shop floor, were determined to be plant clericals. However, in determining that the estimator was an office clerical employee, the Board noted that the estimator



spent 90 percent of his time in the general office area away from the production floor, and entered the floor only when necessary to get data. Notably, contract coordinators, who spent 15 percent of their time typing and the balance securing and maintaining various manufacturing and production records and shipping logs were also found to be office clericals. The Board so found because their contacts with the production and maintenance employees occurred primarily in the office area away from the production floor, and because the contract coordinators worked different hours and they were not docked when absent.

In more recent cases involving the office versus plant clerical distinction, the Board has continued to pay particular attention to the amount of time that disputed clericals spent interacting with and/or interchanging with production and maintenance employees. In Avecor, Inc., 296 NLRB 727 (1989), an order entry clerk and a lab secretary were at issue. The order entry clerk's duties involved receiving customer orders by telephone, preparing paperwork for those orders utilizing normal office equipment, and generating shipping paperwork. The order entry clerk provided production information to the production manager and shipping information to the shipping manager. The Board found the order entry clerk to be an office clerical employee, noting that her work location was in the main office where office clericals were located and that she was not subject to the overtime requirements which affected most of the unit employees. The lab secretary at issue in Avecor worked out of the lab manager's office and produced paperwork on the lab and production reports. This employee was supervised by the lab manager and spent 25 percent of her time in direct contact with the lab or production employees. At work, she utilized a computer and regular office equipment. Again, based on the primary location of the lab secretary's work and her general office type work, she was found to be an office clerical employee. Particularly noteworthy was that neither the data entry clerk nor the lab secretary performed any production work, even on a sporadic or part-time basis. The Board reached this conclusion notwithstanding that the paperwork generated related to production work.

In Virginia Manufacturing Company, 311 NLRB 992 (1993), the Board found that the production control clerk, who reported to the plant superintendent and whose primary job function was compiling production information and keeping track of the raw materials used in the production process, was an office clerical employee. The Board noted that this clerk spent 60 percent of his work time in an office housed in the production area, and 40 percent of his time on the production floor obtaining information for his reports. Even though the production control clerk's monitoring placed him in daily contact with the unit employees, the Board found that these duties were incidental to his primary function of preparing the daily reports, the preparation of which occupied the majority of his working time. Likewise, in Cook Composites and Polymers Co., 313 NLRB 1105 (1994), the Board upheld the finding that the manufacturing data entry operators were office clerical employees. Their essential job duty was to enter data from batch tickets into the computer system. The operators were also responsible for generating address labels for shipping, assigning freight carriers, and filing pick tickets, packaging slips and bills of lading. Although the data entry operators received the same starting pay, identical benefits and safety training as unit employees, the Board found them to be office clericals because they had minimal contact with other unit employees. Those contacts were limited to occasional walking into the areas where unit employees worked to retrieve batch tickets or shipping documents. The data entry operators directed problems with batch tickets to the inventory manager. In addition, the data entry operators did not wear employer-provided uniforms.

Based on the record evidence, I find that purchasing agents Baker and controller/operator Baxter are office clerical, rather than plant clerical employees, and that they do not share a community of interest with the production, maintenance and quality control employees sufficient to require their inclusion in the unit. In this regard, the record establishes that Baker is separately located in an enclosed office in an area removed from the production process, and it appears that he is supervised by Vice President of Manufacturing Vanek and not by the production manager or foreman who supervise the production employees.

While it appears that Baxter spends some time on the production floor at the Monroeville facility, her duties there appear to be limited to checking time records and monitoring packing slips and bills of lading. The record contains no evidence that either Baxter or Baker perform actual production work. Neither wears company-provided uniforms or work clothes. Like the employees found to be office clerical employees in Container Research, Avecor, Virginia Manufacturing, and Cook Composites and Polymers, they are engaged in job tasks and duties which are office clerical rather than plant clerical in nature.

Although the Petitioner asserts that Baxter is a supervisory employee, the record does not support this contention. It is noted that, although Baxter at one time proclaimed herself to be the assistant production manager, no one from management ever announced that she held such a position. To the contrary, Baxter's superior informed her that she was not permitted to distribute business cards implying that she had that title. Moreover, the fact that Baxter directed an employee to stop one task to sand some welds is insufficient to establish supervisory authority.<sup>43</sup> Such routine direction of work does not establish supervisory status. Byers Engineering Corp., 324 NLRB 740 (1997).

Accordingly, based on the above and record as a whole, I shall exclude Rachael Baxter and James Baker from the unit herein found appropriate.

With respect to Mark Roney, initially, I find that the Petitioner has not met its burden of establishing that Roney is a supervisor within the meaning of Section 2(11) of the Act. Roney's interaction with Ivaska and Acie is nothing more than routine communication of instructions without the exercise of any significant discretion. The Board, with Court approval, has found that the assignment and direction of employees in connection with the loading and unloading of trucks in connection with the storage of goods is generally routine in nature. Millard Refrigerated Services, Inc., 326 NLRB 1437, 1438 (1998), and cases cited therein. See also, Fleming Companies, Inc., 330

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<sup>43</sup> There is no evidence or contention that Baxter possesses or exercises the authority to hire, transfer, suspend, layoff, recall, promote, discharge, reward or discipline employees or adjust their grievances.

NLRB 277 (1999). In addition, in the one instance where Roney allowed an employee to leave the facility, the action was approved by the Production Manager. Although it appears that Roney's predecessor may have possessed supervisory authority, the Petitioner failed to establish that Roney assumed any supervisory authority.

Having determined that Roney is not a supervisor, there remains for consideration the question of whether Roney shares a sufficient community of interest with the petitioned-for employees which would require his inclusion in the unit found appropriate herein. In determining whether the employees in the unit sought possess a separate community of interest, the Board examines such factors as mutuality of interest in wages, hours and other working conditions; commonality of supervision; degree of skill and common functions; frequency of contact and interchange with other employees; and functional integration. Boeing Company, 337 NLRB No. 24 (2001), citing Ore-Ida Foods, 313 NLRB 1016 (1994), affd 66 F.3d 328 (7<sup>th</sup> Cir., 1995).

Based on the record, it appears that Roney has regular and continuing interaction with production employees, particularly Ivaska and Acie. Roney is commonly supervised by Production Manager Gingery. Roney's compensation is also comparable to the compensation of the petitioned-for employees and he is subject to the benefits and policies applicable to those employees. Roney spends 75 percent of his time on the shop floor performing work intimately related to the production process. Roney regularly unloads shipments from UPS and, in addition to his duties with respect to shipping and receiving paperwork, is involved in the actual shipping and receiving functions from other carriers by inspecting the goods and ensuring that outbound shipments are securely loaded. Accordingly, I find that purchasing agent Mark Roney shares a sufficient community of interest with the employees in the petitioned-for unit to require his inclusion in the unit.

#### **IV. Designers**

The Petitioner seeks to exclude three designers (James Full, Thomas Antal and Ray Lucas) from the unit petitioned-for herein on the basis that they are technical employees and that they do not share a community of interest with the production and maintenance employees.

The designers are administratively classified as engineering department employees. These employees are under the supervision of Engineering Manager John Kustra.

The record establishes that the designers provide drawings for items to be fabricated in the production shop. All of the designers have cubicles in the main office section of the Duquesne facility where they perform such design work on their computers. Generally, the designers spend 60 to 70 percent of their time in the cubicle working with the computer.

In addition to design work, the designers engage in troubleshooting and research and development to modify machinery or to solve problems with the production process. For example, designer James Full was involved in the assembly of the Employer's spike welding machine. Full prepared individual sketches for each part of the machine, which he gave to the maintenance employee who machined each part. Over the course of about nine months, the machine was assembled piece by piece. The record indicates that Full is currently in the process of simplifying and improving this spike welding machine for ease of operation. Another of Full's assignments involved overseeing the design of a coiling table.

When the Employer built the Duquesne facility, Full did very little work on the computer because he was involved in determining machinery placement and plant design. Finally, the record indicates that in 2001 designers Full and Antal spent three months packaging and loading plates manufactured in the ESP Division. The record indicates that their purpose in participating in this project was to gain insight to better enable them to develop future shipping processes. The record establishes, however, that the designers generally are not assigned to and do not perform purely production tasks, and that production employees do not perform design work.

At times, production employees will consult one of the designers about problems with either a piece of machinery or with the production process as a whole. The designer in turn informs higher management of the problem and will also apprise management of the cost and time involved in solving the problem.

None of the designers punch a timeclock. The record indicates that these employees earn between \$20 and \$25 per hour. Designers utilize the lower parking lot and do not wear uniforms to work. When they are required to go to the production shop, they will wear steel-toed shoes, but they do not otherwise wear these shoes to work. None of the designers possess engineering degrees and they have received virtually no formal schooling or specialized training.<sup>44</sup>

It is well established that in determining appropriate units for collective-bargaining purposes, the Act requires only that a unit be “appropriate” so as to ensure to employees in each case the fullest freedom in exercising the rights guaranteed by the Act. There is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit, or the most appropriate unit. Morand Brothers Beverage Co., et al., 91 NLRB 409, 418 (1950), enfd on other grounds 190 F.2d 576 (7<sup>th</sup> Cir. 1951). See also, Omni International Hotel, 283 NLRB 475 (1987) and Capital Bakers, Inc., 168 NLRB 904, 905 (1967). In addition, the unit sought by the petitioner is always a relevant consideration, and the Board first considers the appropriateness of the unit sought by the petitioner. Overnite Transportation Company, 322 NLRB 723 (1996).

In this case, as previously noted, the Petitioner contends, contrary to the Employer, that the designers should not be included in the petitioned-for unit because they are technical

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<sup>44</sup> The record indicates that approximately ten years ago, the Employer paid for designers Full and Antal and Engineering Manager Kustra to attend a CAD (computer aided drafting) class at Westmoreland County Community College.

employees and because they do not share a community of interest with the production and maintenance employees.

The Board has long applied the criteria that “. . . those held to be technical employees are employees who do not meet the strict requirements of the term ‘professional employee’ as defined in the Act but whose work is of a technical nature and involving the use of independent judgment and requiring the exercise of specialized training usually acquired in colleges or technical schools or through special courses” (footnote omitted). Litton Industries of Maryland, Incorporated, 125 NLRB 722, 724-725 (1959). See also Vapor Corporation, 242 NLRB 776 (1979). However, it is well established that if technical employees otherwise share a community of interest with production and maintenance employees, they may be included in the same unit. Dynalectron Corporation, 231 NLRB 1147, 1148 (1977); Airesearch Manufacturing Company of Arizona, 137 NLRB 632, 635-636 (1962); The Sheffield Corporation, 134 NLRB 1101 (1961).

The Board uses an objective test to determine if technical employees should be excluded or separated from the unit with other employees. Each case is decided after weighing, among other things, the following considerations: 1) bargaining history; 2) common supervision; 3) similarity of skills and job functions; 4) contact or interchange with other employees; 5) type of industry; 6) location of employees within the plant; 7) desires of the parties; and 8) whether any union seeks to represent the technical employees separately. The Sheffield Corporation, supra; Virginia Manufacturing Company, 311 NLRB 992 (1993).

In applying these standards to the instant case, I find that the record does not establish that the above-mentioned employees qualify as technical employees. In this regard, I note that the record does not establish that any of the above-described positions require any formal or specialized training. However, even if the designers were technical employees, the Board no longer uses a per se rule to exclude them from a larger unit. The Sheffield Corporation, supra. As a result, the factors described above must be considered to determine whether or not the designers share a community of interest with other production and maintenance employees.

In considering the applicable factors, I conclude that the designers do not possess such a community of interest with other employees as to require their inclusion in the unit found appropriate herein. Thus, these employees are separately supervised by Kustra, do not perform actual production work, utilize dissimilar skills and often spend the majority of their time in an office-type setting. In addition, although there is some contact between the designers and the petitioned-for employees, this contact is not so substantial and regular as to compel their inclusion in the unit contrary to the desires of the Petitioner.

Accordingly, based upon the above and the record as a whole, I shall exclude the designers from the unit found appropriate herein.

**V. Other Placement Issues**

**a. Timothy Wurzer**

The Union contends, contrary to the Employer, that Wurzer should be excluded on the basis that he primarily functions as a sales employee<sup>45</sup> and that he performs no production or maintenance duties. The Employer's position is that Wurzer is a production worker. It is undisputed, however, that Wurzer has certain sales responsibilities. For example, at least until December 2001, one of Wurzer's responsibilities related to the sales aspect of his job was to be the liaison between the customer and the Employer's logistics employees. For instance, if the shipment date for an order was missing, the record indicates that Wurzer contacted the customer. Wurzer also relayed information to logistics employees concerning any special shipping needs of the customer and whether the customer desired to use its own carrier for shipment.

Wurzer's work area is a cubicle in the main office at the Duquesne facility, which is located across an aisle from the cubicles used by the Employer's designers. Wurzer wears business casual clothes to work. He does not wear steel-toed boots or safety glasses. Wurzer parks in the lower parking lot.

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<sup>45</sup> As noted previously, the parties stipulated that sales employees are properly excluded from the unit found appropriate herein.



The record establishes that in 2001 Wurzer was involved in packing and directing the packing of very large panels or plates fabricated in the Employer's ESP Division. Although the Employer asserts that Wurzer spends a "good bit of time out in the shop," the record reveals that Wurzer performed the packaging work with two designers (Full and Antal), a supervisor from the Monroeville facility, and about six production employees for a three-month period extending from about July to October 2001. Wurzer and the others performed this work in order to help get the shipment out, but the primary purpose of this project was for the Employer to gain an understanding of the packaging process so that new and better techniques could be implemented for future shipments of the large ESP plates.

Wurzer's continuing involvement in the shipping process appears to be limited to designing shipping frames. Because every job involving the manufacture of the ESP panels involves a different quantity or different size of panel, the Employer's shipping hardware must be customized for nearly every job. Wurzer consults with the designers as to the best shipping hardware, or he creates his own drawings, from which production employees fabricate the shipping hardware frames. Other than these duties related to proper shipment of products to customers, it appears from the record that Wurzer is rarely on the production floor and that he does not perform any actual production work. Thus, it appears that the skills and training used by Wurzer in the performance of his duties are sufficiently dissimilar to those of other classifications of unit employees to establish that Wurzer does not possess such a community of interest with the unit employees as to require his inclusion in the unit. Accordingly, I shall exclude Timothy Wurzer from the unit found appropriate herein.

**b. Robert Pelzer**

The Union seeks to exclude Robert Pelzer from the unit found appropriate herein on the basis that he does not share a community of interest with production and maintenance employees sufficient to require his inclusion. Specifically, the Union contends that Pelzer does no production work and does not spend time in the areas where production and maintenance employees work. The Employer

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argues that Pelzer shares a community of interest with production and maintenance employees, and that Pelzer is an integral part of the production process inasmuch as, without Pelzer's input, the equipment utilized by the production workers would not operate properly.

Pelzer has an office at the Monroeville facility.<sup>46</sup> Pelzer was described in the record as having the titles of both controller/operator and programmer/operator. The record indicates that Pelzer submits requisitions for items to be purchased on the job. The record further indicates that before Baxter became a controller/operator, Pelzer fulfilled the duties she now performs with respect to timecards, such as checking employee timecards for accuracy and submitting the time records to payroll. Pelzer now assists Baxter with this duty if necessary. Pelzer also occasionally meets with vendors.

Pelzer's primary duty appears to be programming the burning table at the facility.<sup>47</sup> Pelzer programs the burning table utilizing the computer in his office. It appears that Pelzer does not perform work on the production floor and, thus, is not required to wear safety shoes or safety glasses. Pelzer does not wear a uniform or work clothes<sup>48</sup> to work. Based on the above and the record as a whole, I find that Pelzer does not share such a community of interest with the petitioned-for employees as to require his inclusion in the unit found appropriate herein.

Accordingly, I shall exclude program operator Robert Pelzer from the unit found to be appropriate.

**c. Mark Katis**

As noted previously, the Petitioner contends, contrary to the Employer, that Safety Coordinator Mark Katis must be excluded from the petitioned-for unit on the grounds that he

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<sup>46</sup> Production Manager Smitley, the foremen and quality control also have offices at the facility.

<sup>47</sup> The burning table is operated by controller/operator Mike Maystrovich, whose inclusion in the petitioned-for unit apparently is undisputed.

<sup>48</sup> Pelzer's work attire was described in the record as "nice" jeans or pants, and a shirt.

performs administrative, managerial and supervisory functions and that he lacks a community of interest with the petitioned-for employees.

Katis, the Employer's safety coordinator,<sup>49</sup> is responsible for ensuring that the Employer is in compliance with all federal safety regulations. To this end, Katis spends between 70 and 80 percent of his time on duties related to safety. In accordance with regulations of the Occupational Safety and Health Administration, Katis conducts CPR training for safety committee members<sup>50</sup> and forklift, overhead crane and tow motor training of employees at both of the Employer's facilities. When an employee completes such training, Katis issues certifications or licenses. In the event Katis discovers a safety problem or violation at the facility, he reports the finding to the foreman or to upper management. In the event of a serious safety violation, Katis writes up a safety infraction report and submits it to the supervisor.<sup>51</sup> If a supervisor discovers a safety violation, they will take the appropriate action and then report it to Katis. Katis does not take action with regard to safety violations, but is required to report the infraction to the supervisor.<sup>52</sup>

If an employee becomes injured at work, Katis reports the injury to upper management. If the employee desires medical attention, Katis will then take the employee out of the facility for medical treatment. Katis also completes the initial report of injury for worker's compensation purposes when employees are hurt at work.

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<sup>49</sup> Katis was the night shift supervisor on the ESP Division for a period of one year prior to the fall of 2000.

<sup>50</sup> There are six members of the safety committee, each of whom serve a one-year term. It appears that Katis is a permanent member of the safety committee.

<sup>51</sup> The record indicates that on two occasions Katis informed management that employees were working six feet off the floor without fall protection equipment.

<sup>52</sup> The Employer has a safety enforcement policy that contains a progressive discipline policy which begins with a verbal warning and ends with termination. Both of the reports submitted by Katis involved a first offense. If Katis encountered a repeat offender, he would contact the supervisor, who is responsible for issuing a written warning or greater discipline.

The record indicates that the balance of Katis' time is spent performing maintenance functions. With respect to his maintenance duties, Katis reports to Production Manager Steve Gingery. For the safety aspects of his job, he reports to Vice President of Manufacturing Vanek. Katis is hourly paid and punches a timeclock. Katis parks in the Employer's lower lot. Katis works out of an office next to the lunchroom utilized by the production employees.<sup>53</sup> Katis wears a uniform to work.

As to Katis' maintenance duties, it appears that Katis performs electrical safety checks on equipment and controls the "tag out" log.<sup>54</sup> Katis testified that he has also been called upon for maintenance tasks, including the repair of the line welder, high frequency welding machine and the spike welding machine.

Katis has no authority to hire, transfer, suspend, layoff, recall, promote, discharge, grant time off or to recommend such action. Katis' involvement with the disciplinary process appears to be limited to reporting safety violations to higher management. With respect to any assignment and direction of the workforce, Katis relays instructions from Gingery to the maintenance crew. Katis also submits the daily time sheet for the maintenance department to Gingery.<sup>55</sup> Other than these functions, the record does not reflect that Katis assigns work to maintenance employees. Likewise, there is no evidence in the record that Katis rewards employees or adjusts their grievances.

The record does not establish that Katis formulates and effectuates management policies or has discretion in the performance of his job independent of the Employer's established policies, and thus Katis is not a managerial employee. Although the Petitioner contends that

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<sup>53</sup> This office was previously used by the former maintenance supervisor, Dave Munzak. When Munzak voluntarily left the company, he was not replaced. At that time, Vanek announced to the maintenance employees that they would be reporting to Gingery.

<sup>54</sup> The tag out procedure occurs when maintenance on a piece of equipment is required. Because wires may be exposed, the electrical current must be locked out.

<sup>55</sup> Katis testified that the maintenance employees' time is recorded on one sheet.

Katis exercises independent judgment in determining which maintenance project he will perform and that he assigns employees work and cites them for safety violations, there is insufficient evidence to establish that Katis is a supervisor within the meaning of the Act. Rather, the evidence establishes that Katis acts as an intermediary in relaying communications from Gingery to the maintenance crew, and any assignment and direction given by Katis is exercised in a routine manner. See Somerset Welding & Steel, 291 NLRB 913, 914 (1988); Jakel Motors, Inc., 288 NLRB 730 (1988).

Having determined that Katis is not a managerial or supervisory employee, there remains for consideration the question of whether the community of interest Katis shares with the petitioned-for production and maintenance employees is sufficient to require his inclusion in the unit despite the Petitioner's objection.

In this regard, the record establishes that Katis' duties are primarily related to safety matters. Thus, he is responsible for ensuring a safe working environment. However, the record also establishes that between 20 and 30 percent of Katis' time is spent performing the same type of maintenance duties performed by the maintenance employees who are petitioned for herein.

It is well established that employees who perform dual functions for the same employer may vote, even though they spend less than a majority of their time on unit work, if they regularly perform duties similar to those performed by unit employees for sufficient periods of time to demonstrate that they have a substantial interest in working conditions in the unit. Berea Publishing Company, 140 NLRB 516, 518-519 (1963). See also Genesis Health Ventures of West Virginia, L.P. d/b/a Ansted Center, 326 NLRB 1208 (1998); Air Liquide America Corporation, 324 NLRB 661, 662 (1997). While the Board has held that five to ten percent of an employee's time doing unit work was insufficient to include him in the unit, Pacific Lincoln-Mercury, Inc., 312 NLRB 901 fn. 4 (1993), it has also held that an employee who regularly

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performed unit work 25 percent of each working day was included in the unit. Oxford Chemicals Inc., 286 NLRB 187 (1987).

In addition to his performance of maintenance duties, Katis interacts with employees who are included in the bargaining unit when he conducts the forklift, crane and tow motor training. With respect to the employees on the safety committee, Katis has continuing and regular contact. Moreover, it appears that the skills and training used by Katis in the performance of his maintenance duties are the same as those of the unit employees. Thus, the record establishes that Katis possesses a strong community of interest with the petitioned-for employees sufficient to require his inclusion therein. Accordingly, I shall include Safety Coordinator Mark Katis in the unit herein found appropriate.

## **VI. Findings and Conclusions**

Based upon the entire record in this case, I find and conclude as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production and maintenance employees, including employees classified as crew leaders, quality control employees, purchasing/logistics agent and safety coordinator/maintenance, employed by the Employer at its Monroeville and Duquesne, Pennsylvania, facilities; excluding all designers, other purchasing agents, sales employees, programmer operators, temporary employees, office clerical

employees and guards, professional employees and supervisors  
as defined in the Act.

### **DIRECTION OF ELECTION**

An election by secret ballot will be conducted by the undersigned Regional Director among the employees in the unit set forth above at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.<sup>56</sup> Eligible to vote are those employees in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period and employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced.<sup>57</sup> Those eligible

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<sup>56</sup> Pursuant to Section 103.20 of the Board's Rules and Regulations, official Notices of Election shall be posted by the Employer in conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. As soon as the election arrangements are finalized, the Employer will be informed when the Notices must be posted in order to comply with the posting requirement. Failure to post the Election Notices as required shall be grounds for setting aside the election whenever proper and timely objections are filed. The Board has interpreted Section 103.20(c) as requiring an employer to notify the Regional Office at least five (5) full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice.

<sup>57</sup> In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc. 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that the election eligibility list, containing the full names and addresses of all eligible voters, must be filed by the Employer with the Regional Director within seven (7) days of the date of this Decision and

shall vote whether or not they desire to be represented for collective bargaining by United Steelworkers of America, AFL-CIO, CLC.

**VII. THE RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **January 3, 2003**. The request may **not** be filed by facsimile.

Dated at Pittsburgh, Pennsylvania, this 20th day of December 2002.

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Gerald Kobell  
Regional Director, Region Six

NATIONAL LABOR RELATIONS BOARD  
Room 1501, 1000 Liberty Avenue  
Pittsburgh, PA 15222

177-8560  
401-7550  
440-1760-2420  
440-1760-3420  
440-5067-4900

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Direction of Election. The Regional Director shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before December 27, 2002. No extension of time to file this list may be granted, except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.